No. 91-670

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA,

Petitioner,

v.

RENE MARTIN VERDUGO-URQUIDEZ,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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BRIEF FOR THE UNITED MEXICAN STATES AS *AMICUS CURIAE* IN SUPPORT OF GRANTING REVIEW

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BRIEF FOR THE UNITED MEXICAN STATES AS *AMICUS CURIAE* IN SUPPORT OF GRANTING REVIEW

Pursuant to Rule 37 of the Rules of this Court, the United Mexican States (Mexico) respectfully submits this brief as *amicus curiae* to urge the Court to grant the petition for a writ of certiorari and review the effect of the United States' violation of its extradition treaty with Mexico upon the administration of criminal justice in the United States.

Both the petitioner and the respondent have consented to the submission of this brief, and their writ-

ten consents have been lodged with the Clerk of the Court.

INTEREST OF THE *AMICUS CURIAE*

Verdugo-Urquidez, the respondent, is a national of Mexico; until his forcible removal to the United States some five years ago, he resided in Mexico and enjoyed the protection of the Mexican Constitution and Mexican laws. The extradition treaty presently in force between Mexico and the United States is part of the law of Mexico and contains detailed and comprehensive reciprocal undertakings by the contracting States for the arrest and delivery of offenders found in their territories who are wanted by the other State. In the present case, these treaty commitments were disregarded by petitioner's officials when, by resort to extralegal means of self-help and to bribery, they arranged for the abduction from Mexico of the respondent so that he could be tried in the United States.

Mexico has an interest in ensuring that treaties to which it is a party are interpreted and applied by all courts of its treaty partners in accordance with the express terms of the treaty, in the light of its object and purpose, and by taking into account all other relevant rules of international law applicable in the relations of the parties.

That the respondent should be brought to the bar of justice is undisputed. Mexico, however, strongly believes that breaching solemn international commitments by its treaty partner is not the way to attain this desirable goal. Mexico believes that its views on the violation of the extradition treaty which occurred here and the attendant infringement of Mexico's sov-

ereignty that has cast a pall on Mexico's amicable relations with the United States should be available to the Court when it considers the instant petition.

STATEMENT

In February 1985, Enrique Camarena-Salazar, a United States national and an agent of the United States Drug Enforcement Agency (DEA), was assassinated in Mexico. In January 1986, the respondent was abducted in Mexican territory by former Mexican police officers hired by officials of United States law enforcement agencies and forcibly brought to the United States to stand trial. He was charged and convicted in June 1988 by a federal court in California of several violent crimes growing out of the assassination of agent Camerena, and sentenced to four consecutive 60-year prison terms. In April 1986, Mexico requested information from the United States regarding respondent's removal from Mexican territory. Thereafter, in August 1987, Mexico protested respondent's forcible removal to the United States and the attendant breach of the governing extradition treaty.[1] Respondent timely raised the United States' breach of the treaty[2] as a defense to his prosecution.

On appeal, the court below held that the United States would be in breach of its obligations under the

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[1] The diplomatic notes from the Embassy of Mexico to the United States Department of State, dated April 23, 1986 and August 31, 1987, are reproduced in Appendices A and B to this brief.

[2] Extradition Treaty between the United States of America and the United Mexican States with Appendix, done in Mexico May 4, 1978, entered into force January 25, 1980, 31 U.S.T. 5059, T.I.A.S. No. 9656.

extradition treaty with Mexico if it authorized or sponsored respondent's removal from Mexico without consent of the Government of Mexico. The court remanded the case to the trial court for the limited purpose of determining whether United States officials authorized or sponsored respondent's forcible removal. The court further ruled that if the trial court determined that United States officials had sponsored his removal from Mexico, respondent should be ordered returned to the Mexican authorities, provided the Mexican government is willing to accept his repatriation. Pet. App. 2a, 43a.

SUMMARY OF ARGUMENT

1. Article 9 of the 1978 extradition treaty between the United States and Mexico leaves it to the discretion of the Contracting States whether to extradite their own nationals. If extradition of a national is declined, the requested State is required to prosecute the offender in its own courts. Contrary to its treaty obligations, the United States did not inquire in the present case whether Mexico was willing to deliver the respondent for trial in the United States, nor did the United States afford Mexico the opportunity to try the respondent in its own courts. Instead, in clear violation of the governing extradition treaty, petitioner's officials failed to obtain the consent of the Mexican authorities to respondent's removal from Mexico and brought him forcibly and surreptitiously to the United States for trial.

2. Mexico and the United States are parties to two recent bilateral treaties on mutual legal assistance and on cooperation in combatting narcotics trafficking, and both States have also ratified a multilateral

United Nations Convention on the subject. These treaties and agreements explicitly require that the Contracting States carry out their obligations in a manner consistent with the principles of sovereign equality and territorial integrity of States. The United States' action in abducting the respondent from the territory of Mexico was in disregard of these solemn treaty commitments.

3. As an effective remedy for the treaty violation that occurred in this case, and to prevent a recurrence of the infringement of Mexico's sovereignty and its territorial integrity, the respondent should be ordered returned for trial in Mexico.

ARGUMENT

Petitioner seeks to avoid the treaty violation which pervades this case, and frames the question presented as one of immunity from prosecution of a person "*whom the government brings to this country . . . by means other than those provided for in an extradition treaty.*" (Emphasis added). Petitioner treats the effect of the treaty violation perfunctorily and the attendant infringement of Mexico's sovereignty with silence. The extradition treaty and petitioner's breach thereof lie, however, at the heart of the court of appeals' decision.

1. Article 9 of the 1978 extradition treaty between the United States and Mexico provides:

> **Extradition of Nationals**
>
> 1. Neither Contracting Party shall be bound to deliver up its own nationals, but the executive authority of the requested Party shall, if not prevented by the laws of that Party,

> have the power to deliver them up if, in its discretion, it be deemed proper to do so.
>
> 2. If extradition is not granted pursuant to paragraph 1 of this Article, the requested Party shall submit the case to its competent authorities for the purpose of prosecution, provided that Party has jurisdiction over the offense.

In the present case, the United States chose not inquire about Mexico's willingness to deliver the respondent for trial in the United States, as envisaged by Article 9(1) of the treaty. The United States also failed to afford to Mexico the opportunity to try the respondent in its domestic courts if Mexico declined to extradite him because of his Mexican nationality, as provided by Article 9(2) of the treaty. There is, of course, no question that the courts of Mexico are competent to try the offenses with which the respondent was charged on the basis both of the nationality principle and the territoriality principle of criminal jurisdiction.

Petitioner maintains that since respondent was not extradited under the treaty, no treaty rights are in issue. Pet. at 12-13. Petitioner further contends that there is no provision in the extradition treaty with Mexico "forbidding signatory nations from making extraterritorial arrests without resort to the treaty's provisions." *Id.*, at 16. Mexico disagrees. The extradition treaty governs comprehensively the delivery of all persons for trial in the requesting state "for an offense committed outside the territory of the requesting Party." Article 1(2). In consequence, the United States' failure to seek respondent's extradition under the treaty or to request Mexico to prosecute

the respondent in its domestic courts constituted a material breach of the treaty.

2. Three other treaties and conventions presently in force between Mexico and the United States emphasize Mexico's willingness to provide the fullest cooperation in combatting crime and narcotics trafficking, and to provide effective and timely legal assistance to the United States.

The 1987 Treaty of Cooperation for Mutual Legal Assistance[3] expresses in its preamble the commitment of both States "to cooperate in the framework of their friendly relations, and to undertake mutual legal assistance *to provide the best administration of justice in criminal matters.*" (Emphasis added). Article 1 of the treaty sets forth the clear understanding of both States that—

> 2. This Treaty does not empower one Party's authorities to undertake, in the territorial jurisdiction of the other, the exercise and performance of the functions or authority exclusively entrusted to the authorities of that other Party by its national laws or regulations.

The 1989 Agreement on Cooperation in Combatting Narcotics Trafficking and Drug Dependency[4] emphasizes in Article I, that—

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[3] Treaty of Cooperation Between the United States of America and the United Mexican States for Mutual Legal Assistance, done in Mexico City December 9, 1987, entered into force for the United States May 3, 1991, T.I.A.S. No. ___, *reprinted in* 27 I.L.M. 443 (1988).

[4] Agreement between the United States of America and the

> 2. The Parties will fulfill their obligations under this Agreement in accordance with the principles of self-determination, non-intervention in internal affairs, legal equality, and respect for the territorial integrity of States.
>
> 3. This Agreement does not empower one Party's authorities to undertake, in the territorial jurisdiction of the other, the exercise and performance of the functions or authority exclusively entrusted to the authorities of that other Party by its national laws or regulations.

The multilateral 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs, which both Mexico and the United States have ratified,[5] echoes

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United Mexican States on Cooperation in Combatting Narcotics Trafficking and Drug Dependency, done in Mexico City February 23, 1989, entered into force July 30, 1990, T.I.A.S. No. ___, *reprinted in* 29 I.L.M. 58 (1990).

[5] United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna December 20, 1988, entered into force for the United States November 11, 1990, T.I.A.S. No. ___, *reprinted in* 28 I.L.M. 493 (1989), defines the scope of the Convention as follows:

Article 2

SCOPE OF THE CONVENTION

1. The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provi-

the provisions of the two bilateral agreements between the two States with respect to the observance of the principles of sovereign equality and territorial integrity by the High Contracting Parties.

These accords establish no new norms for the conduct of States; they codify the established rule of international law prohibiting the authorities of one State from performing police or other enforcement functions in the territory of another State without the express permission of the latter, and the principle that an extradition treaty is designed to protect the territorial integrity and sovereignty of the Contracting States. *See United States v. Rauscher*, 119 U.S. 407, 419-20 (1886). These principles, and the reciprocal pledges contained in these international accords were conspicuously disregarded by petitioner's agents when they arranged for respondent's forcible removal from Mexico.

3. International law establishes that a State shall not prosecute or punish a person brought within its territory by recourse to measures in violation of an international treaty or convention without first obtaining the consent of the State whose rights have been violated by such measures. *See Cook v. United States*, 288 U.S. 102, 121 (1933); *see also* Harvard

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sions of their respective domestic legislative systems.

2. *The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.*

3. *A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.* [Emphasis added]

Research in International Law, Draft Convention on Jurisdiction with Respect to Crime, Art. 16, 29 Am.J.Int'l L.Supp. 435, 623 (1935). Here, Mexico has not given its consent to respondent's trial in the United States. On the contrary, in accordance with Art. 9 of the extradition treaty, Mexico has on two occasions requested respondent's return for trial on charges preferred against him in Mexico.[6]

The only effective remedy for the United States' material breach[7] of the extradition treaty that occurred here is respondent's prompt return to Mexico.[8]

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[6] The diplomatic notes from the Embassy of Mexico to the United States Department of State, dated October 23 and November 6, 1991, are reproduced in Appendices C and D to this brief.

[7] See Vienna Convention on the Law of Treaties, May 23, 1969, Article 60(1), *reprinted in* 63 Am.J.Int'l L. 875, 893-94 (1969): "A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part." Subparagraph (b) of paragraph (3) of that Article defines a material breach as "the violation of a provision essential to the accomplishment of the object or purpose of the treaty." See also 2 Restatement (Third) of the Foreign Relations Law of the United States § 901, and Comment *c* thereto (1987).

[8] In its Judgment (indemnity phase) in the *Chorzów Factory* case (Germany v. Poland), 1928 P.C.I.J., ser. A, No. 17, at 4, 47, the Permanent Court of International Justice stated with respect to restitution for international wrongful acts:

> The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all consequences of the illegal act and re-

CONCLUSION

For the foregoing reasons, Mexico urges the Court to grant the petition for a writ of certiorari to review the effect on the administration of justice in the United States of the petitioner's violation of its treaty obligation to Mexico.

Respectfully submitted,

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establish the situation which would, in all probability, have existed if that act had not been committed.

APPENDIX

APPENDIX A

Mexican Diplomatic Note, April 23, 1986

UNOFFICIAL TRANSLATION

The Embassy of Mexico presents its compliments to the Department of State and wishes to refer to the case of Mr. Rene Martin Verdugo Urquidez.

As the Department is well aware various newspapers, both Mexican and North American, have stated that on January 24th of this year, Mr. Martin Verdugo was kidnapped on Mexican territory and taken to the city of Calexico, California, where he was held for alleged drug trafficking charges. According to such press information, the kidnapping of the above mentioned individual was carried out by former Mexican policemen, who in turn were hired by United States authorities, who later allowed them to enter together with their families and reside in United States territory under the protection of the "U.S. Marshal Service".

Apparently, Mr. Verdugo is being held at the "Metropolitan Correctional Center" of San Diego and the Media has indicated that he has recently been taken to testify before the United States Congress.

The Mexican Embassy, following instructions of its Government, would like to point out that those facts, if true, occurred with complete unawareness of Mexican Federal authorities and they constitute violations of Mexican as well as international law.

In this regard, the Embassy requests of the Department of State all the information available from corresponding U.S. authorities in order to determine the veracity of the above stated.

The Embassy of Mexico avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C., April 23, 1986

To the Department of State
Washington, D.C.

APPENDIX A-1

La Embajada de México saluda atentamente al Departamento de Estado y se permite referirse al caso del ciudadano mexicano René Martín Verdugo Urquídez.

Como es del conocimiento de Departamento, diversos periódicos, tanto mexicanos como norteamericanos, han señalado que el 24 de enero último el Sr. Martín Verdugo fue secuestrado en territorio mexicano y trasladado a la ciudad de Calexico, California, en donde fue detenido por supuestos cargos relacionados con el narcotráfico. Según dicha información periodística, el secuestro de esta persona fue realizado por ex-policías mexicanos, contratados para ello por autoridades estadounidenses, la cuales les permitieron, junto con sus familias, el ingreso a territorio de Estados Unidos bajo la protección del "U.S. Marshal Service.".

Aparentemente, el Sr. Verdugo se encuentra internado en el "Metropolitan Correctional Center" de San Diego y la prensa ha indicado que recientemente fue trasladado para comparecer ante autoridades del Congreso de los Estados Unios.

Al Departamento de Estado,
Washington, D.C.

La Embajada de México, por instrucciones de su Gobierno, se permite señalar que los hechos anteriores, de ser verídicos, han ocurrido con el total desconocimiento de las autoridades federales mexicanas, y son violaciones del Derecho mexicano y del Derecho Internacional. En virtud de ello, la Embajada solicita se le proporcione la información pertinente que obre en poder de las autoridades norteamericanas competentes, a efecto de determinar la veracidad de la información antes señalada.

La Embajada de México aprovecha la oportunidad para renovar al Departamento de Estado las seguridades de su más alta consideración.

Washington, D.C., a 23 de abril de 1986.

WAB*jvm

APPENDIX B

Mexican Diplomatic Note, August 31, 1987

UNOFFICIAL TRANSLATION

The Embassy of Mexico presents its compliments to the Department of State and wishes to refer to the Department's note of March 16, 1987, regarding the kidnapping in Mexican territory of the Mexican citizen Rene Martin-Verdugo, on January 26, 1986.

In this regard, and upon instructions from its Government, the Embassy wishes to clarify to the Department that it cannot recognize as valid and legal a practice that disregards the procedures established by the Extradition Treaty currently in force between Mexico and the United States. The reason for this being that such practice constitutes an infringement of the constitutional rights of due process of law and equal protection of law that in cases of deprivation of liberty, like this one, is recognized by the Political Constitutions of both Mexico and the United States of America.

With reference to the case in question, the Embassy wishes to provide the Department with the attached copy of the ruling issued by the Southern California District Court on April 11, 1986. This document explicitly states, at page six, lines 4 through 8, that U.S. authorities and officials from the U.S. Drug Enforcement Agency (DEA) surreptitiously hired Mexican police officers, with a payment of US$32,000.00, on January 28, 1986, to kidnap Mr. Martin-Verdugo and bring him to the United States illegally, as is also stated on lines 15 through 24 of the same page of the document.

To the Department of State
Washington, D.C.

Furthermore, at page 14, lines 9 through 21, of the document, the District Court states that previous rulings by U.S. courts have recognized that abductions from another country violate international law when the offended state objects to the conduct. The Department is well aware that the Mexican Government made a formal complaint regarding the kidnaping of Mr. Rene Martin-Verdugo, by way of this Embassy's diplomatic note number 298, dated April 23, 1986.

Consequently, the Embassy requests the kind mediation of the Department of State in informing the corresponding U.S. judicial authorities of the position of the Mexican Government, so that this case will be properly clarified.

The Embassy of Mexico avails itself of this opportunity to renew to the Department of State the assurances of its highest and distinguished consideration.

Washington, D.C., August 26, 1987.

APPENDIX B-1

La Embajada de México saluda atentamente al Departamento de Estado y hace referencia a su nota fechada el 16 de marzo de 1987 relativa al secuestro, en territorio mexicano, el 24 de enero de 1986, del nacional mexicano René Martín Verdugo.

Sobre el particular, la Embajada siguiendo instrucciones de su Gobierno, desea aclarar al Departamento que no puede reconocer la validez jurídica de prácticas consistentes en no aplicar los procedimientos del Tratado de Extradición vigente entre México y Estados Unidos de América, debido a que tales prácticas son violatorias de las garantías individuales de debido procedimiento legal que en casos de privación de libertad reconocen las Constituciones Políticas tanto de México, como de los Estados Unidos de América.

A este respecto, la Embajada se permite adjuntar una copia de la opinión pronunciada por la Corte de Distrito para el Distrito Sur de California, el 11 de abril de 1986, en la cual, en su página seis, renglones 4 a 8, quedó plenamente registrado que las autoridades norteamericanas y el Drug Enforcement Administration Agency (DEA) contrataron subrepticiamente a agentes de policía mexicanos, pagándoles $32,000.00 dólares el 28 de enero de 1986, para que ilegalmente secuestraran en México al señor Verdugo y éste fuera llevado también ilegalmente a los Estados Unidos de América, tal y como se desprende de las líneas 15 a 24 de la misma página.

Al Departamento de Estado
Washington, D. C.

Anexo.-

A mayor abundamiento, la Corte de Distrito reconoció en dicha opinión, en la página 14, renglones 9 a 21, que los precedentes legales norteamericanos reconocen que el secuestro de una persona de otro país, viola el Derecho Internacional, cuando el Gobierno ofendido objeta dicha conducta. Como es del conocimiento del Departamento de Estado, el Gobierno de México formalmente objetó el secuestro del señor René Martín Verdugo con la nota diplomática de la Embajada de México No. 298, fechada el 23 de abril de 1986.

Por lo mismo, la Embajada solicita la amable intervención del Departamento de Estado para hacer lo anterior del conocimiento de las autoridades judiciales correspondientes, para la debida aclaración de este asunto.

La Embajada de México aprovecha la oportunidad para renovar la Departamento de Estado, las seguridades de su más atenta y distinguida consideración.

Washington, D.C., a 31 de agosto de 1987.

JPM/jvm

APPENDIX C

Mexican Diplomatic Note, October 23, 1991

UNOFFICIAL TRANSLATION

Washington, D.C., October 23, 1991

Excellency:

On behalf of my Government, I have the honor of referring to the Extradition Treaty signed between the United Mexican States and the United States of America, in order to request from Your Excellency's Government the provisional detention for extradition purposes of **René Verdugo Urquidez**, on the basis of articles 1, 2, and particularly article 11 of the aforementioned Treaty. This person is wanted by Mexican authorities who consider him probably guilty of drug related crimes, namely marihuana and cocaine possession, transportation and trafficking, and supplying cocaine; as a result, a warrant for his arrest was issued in criminal proceeding 44/86 by the 1st District Judge in the State of Baja California

This petition is made upon instructions received from the Mexican Secretariat of Foreign Relations in written communication 7169, the pertinent sections of which are transcribed below by the undersigned, the Ambassador of Mexico to the United States of America, as if they were his own text, and for all purposes:

> "Upon instructions from senior Mexican authorities, I am hereby informing you that the Office of the Attorney General of the Mexican Republic, in its note CGJ/UAII/990/91, of October 18, 1991, has requested this Secretariat of Foreign Relations to submit to the competent U.S. authorities the petition for the provisional detention for extradition purposes of RENE VER-

DUGO URQUIDEZ. On March 17, 1986, a warrant of arrest was issued against this person by the 1st District Judge in the State of Baja California, as part of criminal proceeding 44/86, for considering him probably guilty of drug related crimes, in the form of drug possession, transportation, and trafficking, taking marihuana and cocaine out of the country and supplying cocaine. These crimes are covered and punishable by articles 193, part I, and 197, parts I and II of the Penal Code for the Federal District concerning state law matters, and for the Republic as a whole concerning federal law.

"In view of the above, on the basis of articles 102 and 119 of the Political Constitution of the United Mexican States, article 11 of the Extradition Treaty between the United Mexican States and the United States of America, article 3 of the International Extradition Law, article 2, part VII, and article 9, part II of the Bylaws of the Office of the Attorney General, as well as article 15, part IV, and article 36 of the Bylaws of this Secretariat of Foreign Relations, I kindly request that you submit, through the appropriate diplomatic channels, to the competent authorities of the United States of America the formal petition for the provisional detention of RENE VERDUGO URQUIDEZ, against whom the aforementioned warrant of arrest has been issued.

"To this end, enclosed you will find a copy of note 990/91 from the Office of the Attorney General, which contains a description of the actions of which RENE VERDUGO URQUIDEZ is accused, as well as his personal data. With regard to this person's whereabouts, it is known that he is being held in custody at a U.S. penitentiary center; his PROVISIONAL DETENTION FOR

EXTRADITION PURPOSES is requested in view of the fact that there is a possibility he may be freed; since the 9th Circuit Court of Appeals of Pasadena, California, revoked the sentence issued against him.

In this regard, I am transcribing below for all legal purposes the text of note CGJ/UAII/990/91, dated October 18, 1991, from the Attorney General of the Republic of the United Mexican States, which reads as follows:

(see enclosed translation of note CGJ/UAII/990/91)

As a result, and since the above note contains the events and facts concerning the charges, a description of RENE VERDUGO URQUIDEZ, and the promise to formalize the extradition request as well as notification of the existence of a warrant of arrest issued by the competent authority against this person, I submit the above to Your Excellency as the true information it is.

In this regard, I assure Your Excellency that I consider my own the promise to formalize the petition for extradition; and that I will submit said formal petition to Your Excellency within sixty days following confirmation of the provisional detention for extradition purposes of the accused. As a result, I would very much appreciate being informed, as soon as possible, of the exact date on which the sixty day period—mentioned in the Extradition Treaty—starts running.

In view of the above, Mr. Secretary, and since this petition satisfies the conditions described in the Extradition Treaty currently in force between our two countries, and, to the best of my knowledge, also satisfies the internal procedures of the Mexican State and the procedure established by the Treaty concerning PROVISIONAL DETENTIONS, I ask Your Excellency's kind mediation so as to obtain from the competent U.S. authorities, even the

judicial authorities, the extradition of **ENRIQUE VERDUGO URQUIDEZ** from the United States of America to Mexico.

With thanks in advance for Your Excellency's valuable assistance concerning this matter, I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

Gustavo Petricioli
Ambassador

His Excellency
James A. Baker, III
Secretary of State
City

TO THE H. FERNANDO SOLANA MORALES SECRETARY OF FOREIGN RELATIONS

I, IGNACIO MORALES LECHUGA, Attorney Geqneral for the Republic, before you with due respect, I appear and state:

That the Judge of the First District Court in the State of Baja California, on March sixteenth, nineteen hundred and eighty six, issued a warrant of arrest against RENE VERDUGO URQUIDEZ among others, in the criminal case number 44/86, for his presumptive guilt in the commission of the crime against health in the modalities of Possession, Transportation, Trafficking and Taking out of the country marijuana and cocaine, and supplying cocaine, foreseen and sanctioned under Articles 193 section I and 197 sections I and II, of the Criminal Procedures Code for the Federal District in non Federal Matters and for all the Republic in Federal Matters.

By the above, and based on the provisions of Articles 102 and 119 of the Political Constitution of the United States of Mexico, 11 of the Treaty of Extradition between the United States of Mexico and the United States of America, 3° of the International Extradition Law, 2° section VII and 9° section II of the Organic By-laws of the Attorney General's Office for the Republic, I request that through the proper channels, the Government of the United States of America be requested THE PROVISIONAL ARREST FOR EXTRADITION PURPOSES of RENE VERDUGO URQUIDEZ, against whom said warrant of arrest was issued.

The crime for which is requested the PROVISIONAL ARREST FOR EXTRADITION PURPOSES of Mr. VERDUGO URQUIDEZ, is included in the Appendix of said Treaty under number 14. Besides being punishable in the legislation of both countries by prison whose maximum terms is not less than one year.

The illicit conduct that the requested person is accused of, consists of the complicity with two other individuals by the name of SERGIO SANCHEZ MUÑOZ and MICHAEL COOPER, who were involved in narcotraffic in the State of Baja California until the early part of 1986 carrying out the following acts.

Mr. RENE VERDUGO URQUIDEZ and SERGIO SANCHEA MUÑOZ transported by sea marijuana from Puerto Vallarta, Jalisco to San Felipe, Baja California, where on board of land vehicles, moved the drug to the house of MICHAEL COOPER in the Centro Turístico Mosqueda (Mosqueda Turist Center), located at 60 kilometers on the road Mexico-San Felipe. Later on, from that place they would transfer it by air on an aircraft owned by VERDUGO URQUIDEZ, to the nearby north american cities which were Calexico, California; Yuma, Arizona; and San Diego.

On other ocassions, VERDUGO URQUIDEZ took in suitcases different amounts of cocaine to the house of MICHAEL COOPER, which later on, on board of the aircraft was delivered to the above mentioned cities of the United States of America.

Finally, it is worth mentioning, that on other ocassions the now requested one and his narcotraffic partners, organized parties or small gatherings and furnished their employees small amounts of drug for personal consumption.

The described facts and the elements of proof filed during the investigation of illicit behavior attributed to the accused and his accomplices motivated the H. Judge of the First District Court in Baja California to issue the warrant of arrest against him, for his presumptive guilt in the commission of crimes against health in the mode of Possession, Transportation, Trafficking, and taking marijuana and cocaine out of the country and supplying cocaine, foreseen and sactioned by Article 193 section I and Article

197—sections I and II of the Criminal Code for the Federal District in non Federal Matters, and for all the Republic in Federal Matters.

In compliance with Article 11 of the Extradition Treaty executed between the United States of Mexico and the United States of America, the description of the accused according to the records as of 1986 is given as follows:

NAME:	RENE VERDUGO URQUIDEZ
SEX:	MASCULINE
AGE:	38 YEARS OLD
EYES:	BLUE
HEIGHT:	1.78 m APPROXIMATELY
COMPLEXION:	FAIR
PARTICULAR MARKS:	HE HAS A TATOO ON ONE SHOULDER IN A SHAPE OF A FLOWER WITH DIFFERENT COLORS.

Regarding his whereabouts, we know, and it is also public knowledge, that the accused is detained in a Penitentiary Center in the United States of America, and due to the possibility that he obtains his freedom since the Court of Ninth Circuit of Appeals, reversed the sentence pronounced against him, we request his PROVISIONAL DETENTION FOR EXTRADITION PURPOSES.

On terms of the stipulations in the Extradition Treaty that our country celebrated with the United States of America, the promise of formalized the extradition request within a 60 day term counting from the date the PROVISIONAL ARREST FOR EXTRADITION PURPOSES of Mr. RENE VERDUGO URQUIDEZ is issued, is granted.

Because of the above, I request respectfully from you, H. Secretary of Foreign Relations, to issue your instructions so that through that H. Secretariat, THE REQUEST OF PROVISIONAL ARREST WITH EXTRADITION PURPOSES of RENE VERDUGO URQUIDEZ be presented to the Government of the United States of America. I

would appreciate any information that you would provide on this matter to the undersigned as well as to the General Juridical Coordinator of this Institution about the steps that will be carried out.

HAVING NOTHING ELSE TO ADD, I take advantage of the ocassion to greet you.

Mexico, Federal District, August twenty-eight, nineteen ninety one.

THE ATTORNEY GENERAL OF THE REPUBLIC

IGNACIO MORALES LECHUGA

APPENDIX C-1

Washington, D.C., a 23 de octubre de 1991.

Señor Secretario:

En nombre de mi Gobierno, tengo a honra referirme al Tratado de Extradición suscrito entre los Estados Unidos Mexicanos y los Estados Unidos de América, para solicitar al Gobierno de Vuestra Excelencia, con base en los Artículos 1, 2 y, en particular, con fundamento en el Artículo 11 del citado tratado, la detención provisional con fines de extradición del señor **René Verdugo Urquidez** a quien las autoridades mexicanas reclaman por su probable responsabilidad en la comisión del delito contra la salud en las modalidades de posesión, transportación, tráfico, sacar del país los estupefacientes marihuana y cocaína y suministro de cocaína, delito por el cual resultó orden de aprehensión en su contra, según la causa penal número 44/86, del C. Juez Primero de Distrito en el Estado de Baja California.

Lo anterior, en virtud de la gestión que me encomendara la Secretaría de Relaciones Exteriores, mediante el oficio 7169, cuyo texto, para todos los efectos legales a que haya lugar, el que suscribe, Embajador de México ante los Estados Unidos de América, hace suyo y transcribe en su parte conducente a continuación:

(Por instrucciones superiores . . .

Al Excelentísimo Señor
James A. Baker III,
Secretario de Estado,
Ciudad.

"Por instrucciones superiores me permito dirigirme a usted, a efecto de hacer de su conocimiento que la Procuraduría General de la República, en oficio CGJ/UAII/990/91 de 18 de octubre de 1991, ha solicitado a esta Secretaría de Relaciones Exteriores, sea el conducto para presentar ante las autoridades de los Estados Unidos de América, la Petición de Detención Provisional con fines de extradición de RENE VERDUGO URQUIDEZ, en contra de quien el C. Juez Primero de Distrito en el Estado de Baja California, con fecha 17 de marzo de 1986, libró orden de aprehensión, dentro de la causa penal 44/86, por su probable responsabilidad en la comisión del delito contra la salud en las modalidades de posesión, transportación, tráfico, sacar del país estupefacientes marihuana y cocaína y suministro de cocaína, previsto y sancionado por los artículos 193 fracción I y 197 fracciones I y II del Código Penal para el Distrito Federal en Materia de Fuero Común y para toda la República en Materia del Fuero Federal.

"Por lo anterior, y con fundamento en lo dispuesto por los artículos 102 y 119 de la Constitución Política de los Estados Unidos Mexicanos, 11 del Tratado de Extradición celebrado entre los Estados Unidos Mexicanos y los Estados Unidos de América, 3° de la Ley de Extradición Internacional, 2 fracción VII y 9 fracción II de la Ley Orgánica de la Procuraduría General de la República y 15 fracción IV y 36 del Reglamento Interior de esta Dependencia del Ejecutivo Federal, solicito de usted atentamente, que por los conductos diplomáticos debidos, presente ante las autoridades competentes de los Estados Unidos de América, la petición de detención provisional con fines de extradición de RENE

VERDUGO URQUIDEZ, en contra de quien se ha dictado la orden de aprehensión referida.

"Para tal efecto, anexo al presente encontrará usted copia del oficio 990/91 de la Procuraduría General de la República, que contiene una relación de los hechos que se le imputan al reclamado y su media filiación. Respecto de la localización del reclamado, se tiene conocimiento que se encuentra recluido en un Centro Penitenciario de los Estados Unidos de América y ante la posibilidad de que obtenga su libertad, toda vez que la Corte del Noveno Circuito de Apelaciones de Pasadena, California, revocó la sentencia dictada en su contra, se solicita su detención provisional con fines de extradición."

En ese sentido, me permito transcribir, para los efectos correspondientes, el texto del oficio CGJ/UAII/990/91 de 18 de octubre de 1991, del Señor Procurador General de la República, de los Estados Unidos Mexicanos, que a la letra dice:

"IGNACIO MORALES LECHUGA, Procurador General de la República, ante usted con el debido respeto comparezco y expongo:

"Que el C. Juez Primero de Distrito en el Estado de Baja California, con fecha diecisiete de marzo de mil novecientos ochenta y seis, libró orden de aprehensión en contra de RENE VERDUGO URQUIDEZ, entre otros, dentro de la causa penal número 44/86, por su probable responsabilidad en la comisión del delito contra la salud en las modalidades de posesión, transportación, tráfico, sacar del país los estupefacientes marihuana y cocaína y suministro de cocaína, previsto y sancionado por los artículos 193 fracción I y 197 fracciones I y II, del Código Penal para el Distrito Federal en Materia de Fuero Co-

mún y para toda la República en Materia del Fuero Federal.

"Por lo anterior y con fundamento en lo dispuesto por los artículos 102 y 119 de la Constitución Política de los Estados Unidos Mexicanos, 11 del Tratado de Extradición entre los Estados Unidos Mexicanos y los Estados Unidos de América, 3° de la Ley de Extradición Internacional, 2° fracción VII y 9° fracción II de la Ley Orgánica de la Procuraduría General de la República, solicito que por los conductos diplomáticos, se requiera al gobierno de los Estados Unidos de América, la DETENCION PROVISIONAL CON FINES DE EXTRADICION de RENE VERDUGO URQUIDEZ, en contra de quien se dictó la orden de aprehensión referida.

"El delito por el que se requiere la DETENCION PROVISIONAL CON FINES DE EXTRADICION del señor VERDUGO URQUIDEZ, se encuentra comprendido en el apéndice al Tratado invocado, bajo el numeral 14, además de ser punible en la legislación de ambos países, con pena de privación de la libertad cuyo máximo no es menor de un año.

"La conducta ilícita que se atribuye al reclamado consiste en que en complicidad con otras dos personas de nombre SERGIO SANCHEZ MUÑOZ y MICHAEL COOPER, se dedicaban hasta principios del año de 1986, al narcotráfico en el Estado de Baja California, realizando los siguientes actos.

"Él señor RENE VERDUGO URQUIDEZ y SERGIO SANCHEZ MUÑOZ, vía marítima, transportaban marihuana de Puerto Vallarta, Jalisco, a San Felipe, Baja California, en donde a bordo de vehículos terrestres trasladaban la droga a la casa de MICHAEL COOPER, en el Centro Tur-

ístico Mosqueda, que se encuentra ubicado a 60 kilómetros sobre la carretera México-San Felipe, lugar del que posteriormente la trasladaban por vía aérea en una avioneta propiedad de VERDUGO URQUIDEZ, a las ciudades estadounidenses aledañas como son: Calexico, California; Yuma, Arizona y San Diego.

"En otras ocasiones, VERDUGO URQUIDEZ, llevaba en maletas a la citada casa de MICHAEL COOPER, diferentes cantidades de cocaína, la que también, posteriormente, a bordo de la avioneta, enviaban a las referidas ciudades de los Estados Unidos de América.

"Finalmente, cabe señalar, que en ocasiones en que el ahora reclamado y sus socios en el narcotráfico, efectuaban fiestas o reuniones, obsequiaban a sus ayudantes pequeñas dosis de droga para su uso.

"Los hechos descritos y los elementos de prueba aportados durante la investigación de la conducta ilícita atribuída al reclamado y sus cómplices, motivaron al C. Juez Primero de Distrito en Baja California, a dictar la orden de aprehensión en su contra, por su probable responsabilidad en la comisión del delito contra la salud en las modalidades de Posesión, Transportación, tráfico, sacar del país los estupefacientes marihuana y cocaína, y el suministro de cocaína, previsto y sancionado por los artículos 193, fracción I y 197, fracciones I y II del Código Penal para el Distrito Federal en Materia de Fuero Común y para toda la República en Materia de Fuero Federal.

"En términos del artículo 11 del Tratado de Extradición celebrado entre los Estados Unidos Mexicanos y los Estados Unidos de América, se proporciona la descripción del reclamado según antecedentes del año de 1986.

NOMBRE: RENE VERDUGO URQUIDEZ
SEXO: MASCULINO.
EDAD: 38 AÑOS.
COLOR DE OJOS: AZUL
ESTATURA: 1.78Mts. APROXIMADAMENTE.
COLOR DE TEZ: BLANCA.
SEÑAS PARTICULARES: TIENE UN TATUAJE EN UN HOMBRO EN FORMA DE FLOR DE DIFERENTES COLORES.

"Respecto de su localización, es de nuestro conocimiento, así como del dominio público, que el reclamado se encuentra recluído en un Centro Penitenciario de los Estados Unidos de América, y ante la posibilidad de que obtenga su libertad toda vez que la Corte del Noveno Circuito de Apelaciones de Pasadena, California, revocó la sentencia dictada en su contra, solicitamos su DETENCION PROVISIONAL CON FINES DE EXTRADICION.

"En términos de lo estipulado en el Tratado de Extradición que nuestro país tiene celebrado con los Estados Unidos de América, se otorga la promesa de formalizar la solicitud de extradición en un término que no exceda de 60 días contados a partir de la fecha en que se decrete la DETENCION PROVISIONAL CON FINES DE EXTRADICION del señor RENE VERDUGO URQUIDEZ.

"En mérito de lo anteriormente expuesto y fundado, solicito a usted atentamente C. Secretario de Relaciones Exteriores, se sirva girar sus apreciables instrucciones a efecto que por conducto de esa H. Secretaría se presente al Gobierno de los Estados Unidos de América, la SOLICITUD DE DETENCION PROVISIONAL CON FINES DE EXTRADICION de RENE VERDUGO URQUIDEZ, agradeciendo la información que en su oportunidad se proporcione

tanto al suscrito como al Coordinator General Jurídico de esa Institución, sobre las gesiones que se efectuen al respecto."

Por lo anterior, toda vez que en el documento que arriba transcribo se expresan actos y hechos relacionados con el delito que se imputa al reclamado, su descripción, y su paradero en territorio estadounidense, así como la promesa de formalizar la solicitud de extradición respectiva y la existencia de orden de aprehensión librada por autoridad judicial competente en contra del reclamado, me permito presentarlos como verídicos que son ante Vuextra Excelencia.

En ese sentido, me permito asegurar a Usted que hago mía la promesa de formalizar la solicitud de extradición y que dentro del término de sesenta días, a partir de la fecha en que se confirme la detención provisional con fines de extradición del sujeto reclamado, presentaré en sus términos la correspondiente solicitud formal de extradición, por lo que le agradeceré comunicarme a la brevedad posible, la fecha precisa en que comience a correr el plazo a que se hace mención en el tratado de referencia.

Por lo arriba señalado, Señor Secretario, al encontrarse la petición que hago dentro de los supuestos descritos por el Tratado de Extradición vigente entre nuestros dos países, al tiempo que, en mi mejor opinión se satisfacen tantos los procedimientos internos del Estado Mexicano como los requerimientos del Tratado invocado, para dar curso a esta solicitud de DETENCION PROVISIONAL ruego a Usted su amable intervención para obtener de las autoridades estadounidenses competentes, incluso de las judiciales, la extradición desde los Estados Unidos de América a México, del señor **René Verdugo Urquidez**.

Al agradecer a Vuestra Excelencia, anticipadamente, su valioso concurso en la gestión solicitada, hago propicia la ocasión para renovarle la seguridad de mi más alta y distinguida consideración.

Gustavo Petricioli
Embajador

c.c.p.—Lic. Carlos Pujalte Piñeiro, Consultor Jurídico Adjunto.-Secretaría de Relaciones Exteriores, México, D.F.

c.c.p.—C. Secretario de Relaciones Exteriores.-Dirección General de Asuntos Jurídicos.-Dirección Jurídico Contencionsa.-En relación con su oficio 7169 del 22 de octubre de 1991.

GCZ/ADL.

APPENDIX D

Mexican Diplomatic Note, November 6, 1991

UNOFFICIAL TRANSLATION

The Embassy of Mexico presents its compliments to the Department of State and wishes to refer to the case of Mr. René Martín Verdugo Urquídez.

In this regard, and taking into account the state of the judicial proceedings against this person, the Government of Mexico reiterates the content of its diplomatic notes of April 23, 1986, and August 31, 1987, to the Government of the United States. It should be indicated that the note dated April 23, was only a request for information on the events surrounding this case, and that there was no notification of Mr. Verdugo Urquídez's detention. However, the note indicated that if the news published by the press regarding the kidnapping of Mr. Verdugo Urquídez were true, such an action would constitute a violation of Mexican, U.S. and international laws.

The second note by the Government of Mexico explicitly remarked on the illegality of the kidnapping of Mr. Verdugo Urquídez from Mexican territory, and protested the violation of the Extradition Treaty in force between Mexico and the United States. The note mentioned the District Court's findings that U.S. agents paid for the kidnapping.

It is on the basis of the above statement by the District Court that the Government of Mexico wishes to emphasize the need to determine the responsibility for the kidnapping of the persons involved. The Mexican agents that detained Mr. Verdugo Urquídez overstepped their authority, and consequently violated the rights stated in Articles 14 and 16 of the Constitution of the United Mexican States—that establish the principles of due process of law and the equal

protection of law; consequently, said Mexican agents violated Mexican, U.S. and international laws, since the Extradition Treaty forms part of the legislation of both countries.

As a result, the Government of Mexico requests that the harm done be corrected through the repatriation of Mr. Verdugo Urquídez. Once the repatriation takes place, the Government of Mexico will prosecute Mr. Verdugo Urquídez for his probable responsibility for the drug related crimes of possessing, transporting, taking out of the country and trafficking in marihuana and cocaine, as well as supplying cocaine. Confirmation of this fact was given by way of the Embassy's diplomatic note 1002, of October 23, 1991, requesting the provisional detention for extradition purposes of Mr. René Martín Verdugo Urquídez.

The Embassy of Mexico avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C., November 6, 1991

To the Department of State
Washington, D.C.

APPENDIX D-1

La Embajada de México saluda atentamente al Departamento de Estado y tiene el honor de hacer referencia al caso del señor René Martín Verdugo Urquidez.

Sobre el particular y tomando en cuenta el estado procesal del caso, el Gobierno de México reitera al Gobierno de los Estados Unidos el contenido de sus Notas diplomáticas de fechas 23 de abril de 1986 y 31 de agosto de 1987. Cabe señalar que la Nota del 23 de abril únicamente solicitó información sobre los hechos, ya que no existió notificación de la detención. Sin embargo, en dicha Nota se especifió que de ser ciertas las versiones de prensa relativas al secuestro del señor Verdugo Urquidez, ello constituiría una violación a los Derechos mexicano, norteamericano y al internacional.

La segunda Nota del Gobierno de México literalmente destacó la ilegalidad del secuestro del señor Verdugo Urquidez del territorio mexicano. En este Nota se denuncia la violación del Tratado de Extradición vigente entre México y los Estados Unidos; en ella se hace referencia a la opinión de la Corte de Distrito donde se menciona que algunos agentes norteamericanos pagaron porlas sustracción del señor Vergudo Urquidez.

Es por la propia declaración ante la Corte de Distrito que el Gobierno de México desea destacar la necesidad de fijar la responsabilidad de las personas involucradas en el secuestro en territorio mexicano del nacional Verdugo Urquidez. Los agentes mexicanos que detuvieron al señor Verdugo a instancias de extranjeros actuaron fuera de la esfera de su competencia y por lo tanto de la ley y en contravención a las garantías consagradas en los Articulos 14 y 16 de la Constitución Política de los Estados Unidos Mexicanos que consagran el principio de legalidad y las formalidades esenciales del procedimiento. Por ende, contravinieron tanto el Derecho mexicano, al Derecho esta-

dounidense y al Internacional, ya que el Tratado de Extradición forma parte de la legislación de ambos países.

Por lo tanto, el Gobierno de México solicita el resarcimiento del daño por medio de la repatriación del señor Verdugo Urquidez. Una vez que el indiciado sea repatriado, el Gobierno de México lo encausará por su probable responsabilidad en la comisión del delito contra la salud en las modalidades de posesión, transportación, tráfico, sacar del país los estupefacientes marihuana y cocaína y suministro de cocaína. Lo anterior, queda confirmado por la Nota diplomática 1002 del 23 de octubre de 1991, a través de la cual se solicitó la detención provisional con fines de extradición del señor René Martín Verdugo Urquidez.

La Embadaja de México aprovecha la oportunidad par renovar al Departamento de Estado el testimonio de su más alta consideración.

Washington, D. C., a 6 de noviembre de 1991.

Al Departamento de Estado,
Washington, D. C.

c.c.p.—Consultoria Juridica.—Secretaría de Relaciones Exteriores.—México, D.F..—En atención a su telefax de fecha 4 de noviembre de 1991.

WAB/ADL.